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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/405,839	09/27/1999	SIMON WILLIAM JONATHAN BRIGHT	PM-263754	9963

7590

04/22/2002

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EXAMINER

LACOURCIERE, KAREN A

ART UNIT PAPER NUMBER

1635

DATE MAILED: 04/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

EXAMINER	
ART UNIT	PAPER NUMBER
	21

DATE MAILED

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run _____ or continues to run _____ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 04-02-02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a) ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b) ☒ They raise new issues that would require further consideration and/or search. (See Note).
- c) ☐ They raise the issue of new matter. (See Note).
- d) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e) ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: Amendments broaden the scope to include functional equivalents of the recombinant
disclosed previously claims (see for example amend to claims 29-30). Amend to claim
27 completely changed characteristics of the claimed expression system. (Claim 46 has changed
from plant cell survival to seed viability. All new limitations, as discussed above, would require
a new search and consideration under 112, 1st paragraph.)

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: _____

Claims objected to: _____

Claims rejected: 27, 28, 38-50, 52

However:

☒ Applicant's response has overcome the following rejection(s): Applicant's arguments have convinced the
need to provide the certified priority to GA920651.2 as submitted in parent app. 08/27/91, 783.

4. ☒ The affidavit or exhibit on request for reconsideration has been considered but does not overcome the rejection because claim 46
is maintained as req. under 102(e) for reasons foreseen. Applicant argues limitations not in claim
only in specification (construct in Williams et al. "control" development, therefore, control whether seeds
produced are capable of developing into mature plants)
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

note: claim 51 was previously cancelled in Amendment C, filed 07-13-01

ANDREW WANG
PRIMARY EXAMINER

